

## PART 714—ACTIVITIES INVOLVING SCHEDULE 3 CHEMICALS

Sec.

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SUPPLEMENT NO. 1 TO PART 714—SCHEDULE 3 CHEMICALS

SUPPLEMENT NO. 2 TO PART 714—DEADLINES FOR SUBMISSION OF SCHEDULE 3 DECLARATIONS, REPORTS, AND AMENDMENTS

AUTHORITY: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

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### § 714.1 Annual declaration requirements for plant sites that produce a Schedule 3 chemical in excess of 30 metric tons.

(a) *Declaration of production of Schedule 3 chemicals for purposes not prohibited by the CWC*—(1) *Production quantities that trigger the declaration requirement.* You must complete the appropriate forms specified in paragraph (b) of this section if you have produced or anticipate producing a Schedule 3 chemical (see Supplement No. 1 to this part) as follows:

(i) *Annual declaration on past activities.* You produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year.

(ii) *Annual declaration on anticipated activities.* You anticipate that you will produce at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical in the next calendar year.

(2) *Schedule 3 chemical production.* (i) For the purpose of determining Schedule 3 production, you must include all steps in the production of a chemical in any units within the same plant through chemical reaction, including any associated processes (e.g., purifi-

cation, separation, extraction, distillation, or refining) in which the chemical is not converted into another chemical. The exact nature of any associated process (e.g., purification, etc.) is not required to be declared.

(ii) For the purpose of determining if a Schedule 3 chemical is subject to declaration, you must declare an intermediate Schedule 3 chemical, but not a transient intermediate Schedule 3 chemical.

(3) *Mixtures containing a Schedule 3 chemical.* (i) *When you must count the quantity of a Schedule 3 chemical in a mixture for declaration purposes.* The quantity of each Schedule 3 chemical contained in a mixture must be counted for declaration purposes only if the concentration of each Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent.

(ii) *How to count the amount of a Schedule 3 chemical in a mixture.* If your mixture contains 80% or more concentration of a Schedule 3 chemical, you must count only the amount (weight) of the Schedule 3 chemical in the mixture, not the total weight of the mixture.

(b) *Types of declaration forms to be used*—(1) *Annual declaration on past activities.* You must complete the Certification Form and Forms 3-1, 3-2, 3-3, and Form A if one or more plants on your plant site produced in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year. Form B is optional.

(2) *Annual declaration on anticipated activities.* You must complete the Certification Form, and Forms 3-1 and 3-3 if you anticipate that you will produce at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical in the next calendar year.

(c) *Quantities to be declared*—(1) *Production of a Schedule 3 chemical in excess of 30 metric tons.* If your plant site is subject to the declaration requirements of paragraph (a) of this section, you must declare the range within which the production at your plant site falls (30 to 200 metric tons, 200 to 1,000 metric tons, etc.) as specified on Form 3-3. When specifying the range of production for your plant site, you must

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aggregate the production quantities of all plants on the plant site that produced the Schedule 3 chemical in amounts greater than 30 metric tons. Do not aggregate amounts of production from plants on the plant site that did not individually produce a Schedule 3 chemical in amounts greater than 30 metric tons. You must complete a separate Form 3-3 for each Schedule 3 chemical for which production at your plant site exceeds 30 metric tons.

(2) *Rounding.* To determine the production range into which your plant site falls, add all the production of the declared Schedule 3 chemical during the calendar year from all plants on your plant site that produced the Schedule 3 chemical in amounts exceeding 30 metric tons, and round to the nearest ten metric tons.

(d) *“Declared” Schedule 3 plant site.* A plant site that submitted a declaration pursuant to paragraph (a)(1) of this section is a “declared” Schedule 3 plant site.

(e) *Routine inspections of declared Schedule 3 plant sites.* A “declared” Schedule 3 plant site is subject to routine inspection by the Organization for the Prohibition of Chemical Weapons (see part 716 of the CWC) if:

(1) The declared plants on your plant site produced in excess of 200 metric tons aggregate of any Schedule 3 chemical during the previous calendar year; or

(2) You anticipate that the declared plants on your plant site will produce in excess of 200 metric tons aggregate of any Schedule 3 chemical during the next calendar year.

### §714.2 Annual reporting requirements for exports and imports in excess of 30 metric tons of Schedule 3 chemicals.

(a) Any person subject to the CWC that exported from or imported into the United States in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year has a reporting requirement under this section.

(1) *Annual report on exports and imports.* Declared plant sites, undeclared plant sites, trading companies, or any other person subject to the CWC that exported from or imported into the

United States in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year must submit an annual report on exports and imports.

NOTE 1 TO §714.2(a)(1): Declared and undeclared plant sites must count, for reporting purposes, all exports from and imports to the entire plant site, not only from or to individual plants on the plant site.

NOTE 2 TO §714.2(a)(1): The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 3 chemicals contained in reports. The U.S. Government will add all export and import information contained in reports to establish the U.S. national aggregate declaration on exports and imports.

(2) *Mixtures containing a Schedule 3 chemical.* The quantity of a Schedule 3 chemical contained in a mixture must be counted for reporting an export or import only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent. For reporting purposes, only count the weight of the Schedule 3 chemical in the mixture, not the entire weight of the mixture.

NOTE TO §714.2(a)(2): The “80% and above” mixtures rule applies only for reporting purposes. This rule does not apply for purposes of determining whether the export of your mixture to a non-State Party requires an End-Use Certificate or for determining whether you need an export license from BIS (see 15 CFR 742.2, 742.18 and 745.2 of the Export Administration Regulations) or from the Department of State (see the International Traffic in Arms Regulations (22 CFR parts 120 through 130)).

(b) *Types of forms to be used.*—(1) *Declared Schedule 3 plant sites.* (i) If your plant site is declared for production of a Schedule 3 chemical (and has completed questions 3-3.1 and 3-3.2 on Form 3-3) and you also exported from or imported to your plant site in excess of 30 metric tons of that same Schedule 3 chemical, you must report the export or import by either:

(A) Completing question 3-3.3 on Form 3-3 on your declaration for that same Schedule 3 chemical; or

(B) Submitting, separately from your declaration, a Certification Form, Form 3-1, and a Form 3-3 for each Schedule 3 chemical to be reported, completing only question 3-3.3. Attach